

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Seymour Board of Education

Appearing on behalf of the Student: Pro Se

Appearing on behalf of the
Seymour Board of Education:

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Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Has the Seymour Board of Education [hereinafter, the Board] provided an appropriate program for the 2003-2004 and 2004-2005 school years?
2. Has the Board provided appropriate support services for the Student including but not limited to transportation?
3. Should the Board have provided an extended day program?
4. Has the Board failed to provide an appropriate extended year program?
5. Has the Board failed to develop an appropriate behavior plan?
6. Has the Board failed to convene a PPT in a timely manner after the parent requested it?
7. Has the Board failed to allow the parents to be full participants in PPT meetings by making ongoing and derogatory remarks relative to the parents' five children?

SUMMARY:

The Student is an eight year old boy who has been identified as having multiple disabilities and needing services under the Individuals with Disabilities Education Act (hereinafter IDEA). There is not agreement about the nature of his disability and there is not agreement about his placement. There is disagreement about various of the services offered and provided. There is disagreement about progress. The Board maintains that the Student has made reasonable academic and behavioral progress. The Parent maintains the Student has made little or no progress. The Student's current placement is

within the Board's public school and the parent has requested the Student be placed in the Foundation School.

The parent initiated a due process hearing on June 23, 2004. A prehearing conference was held on July 6, 2004 and hearings were scheduled to accommodate the various scheduling needs of the parties on July 19, July 23, August 20, August 23, September 9, October 25, October 27 and October 28, 2004. The Student was not represented by counsel but rather by an advocate who attended the hearing with the parent and advised the parent throughout the proceedings. A post-hearing briefing schedule was set with the instruction that the briefs be submitted in hard and electronic format by set dates. Neither party was able to comply with these instructions for various reasons, the Parent's brief arriving late and the Board's brief never arriving in electronic form, and thereby causing delay with the final date for mailing of the decision which was set at February 26, 2005. The Parent filed a brief and elected not to file a Reply Brief. The Board did file both a Brief and a Reply Brief.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student was born on January 6, 1996 and was eight years old at the commencement of this hearing. P-1
2. The Student frustrates quickly, bangs his head at times, refers to his self as retarded and stupid and has no friends in the home setting. (Testimony of Grandfather.) The Student is a behavioral problem at home at times. (Testimony of Mother, testimony of Consultant Mutrie.) The Student is not a behavioral problem at his grandmother's house, as he follows the rules as do the other grandchildren but he cannot read or write or articulate clearly in the home setting. (Testimony of Grandmother.) The Parent sees reading and behavior as the primary areas of deficiency in the Student. (Testimony of Mother, brief of Parents at page 7.)
3. The student has been enrolled in the Waterbury public school in a self contained classroom and then transferred to the Seymour public school at the end of his kindergarten year. B-3
4. The first PPT held by Seymour was on June 19, 2003. The Student had a dual identification of neurological disorder and speech and language disorder. He was placed in a self-contained classroom for all of his academic instruction totaling 24.5 hours a week of special education services. The Student also received .5 hours of occupational therapy a week and one hour of speech and language a week. The parent was accompanied at the PPT by a social worker from St. Vincent Special Needs Service. B-3

5. The Student's goals included a behavioral goal: "[The Student] will improve his behavior skills to an appropriate level." He had three behavioral objectives: 1. [The Student] will initiate and respond appropriately to peers and adults. 2. [The Student] will follow classroom rules with prompts. 3. [The Student] will comply with adults in a variety of situations. B-3 at 11.
6. Under "Present Levels of Educational Performance" the PPT indicated the Student's IQ tested by the WISC III in the "moderately to mildly deficient range." B-3 at 3.
7. A second PPT was held on September 3, 2003 at which time the student was moved to a regular education classroom. B-5.
8. The behavioral goal and objectives remained unchanged. B-5 at 7.
9. Under "Present Levels of Educational Performance" the PPT indicated the Student's full scale IQ tested at 58 (verbal 56, performance 68). B-3 at 3
10. On one occasion in November 2003 this Student inappropriately touched another first grade student on her chest. This occurred when the students were returning from recess and occurred right in front of his regular education teacher; the Student spontaneously stopped the behavior without intervention by the teacher, but then the female student said to the teacher "[The Student] touched my boob and I don't like it." Based on this, the teacher, who is a relatively new and therefore inexperienced teacher, felt she needed to report the matter to Principal Gagliardi. Testimony of the Rebecca Campanelli.
11. Principal Gagliardi suspended the Student for two days for this incident and the reporting teacher, Teacher Campanelli, was not involved in the decision to suspend. Testimony of Principal Gagliardi. Testimony of Rebecca Campanelli. P-41.
12. Teacher Campanelli had thought the behavior was impulsive and not malicious on the part of the Student as it occurred during a big transition time and the Student was immediately contrite when Teacher Campanelli handled it appropriately by discussing the wrongdoing with the Student. She was therefore surprised when she learned the Student had been suspended by Principal Gagliardi. Testimony of Rebecca Campanelli.
13. The Board did not satisfactorily explain why the matter was significant enough to warrant a two day suspension of a first grader and yet not significant enough to convene a PPT to review the behavior plan. Record as a whole.
14. In January of 2004 the PPT agreed to retain a behavioral consultant. As a result Laura Mutrie, Director of Clinical Services, a social worker specializing in children and family matters, was retained by the Board to provide a consult rather than devise a behavior plan. Later the Parent wanted a functional behavioral analysis and the Board agreed at the July 2004 PPT. Testimony of Director Castellucci, testimony of Laura Mutrie.
15. Original behavioral concerns included inappropriate touching, talking out in class, impulsive blurting out, clowning around for attention, inappropriate racial and sexual comments, crawling, slamming into walls, throwing self on floors, disobeying school rules and disrespecting adults and perseveration. P-

- 15, page 2, testimony of Mother, Laura Mutrie, Director Castellucci, Special Education Teacher Heimann.
16. Ms. Mutrie determined that the behavioral plan being used by the Board was not appropriate in that there were too many target behaviors, not frequent enough intervals, an emphasis on negative rather than positive reinforcement, improper use of the form and insufficient school-home communication.
Testimony of Laura Mutrie
 17. The PPT of February 26, 2004 was distinguished by an unusual level of acute and angry disagreement between the Board Consultant and the Board Staff. The Board staff questioned how Ms. Mutrie could render opinions when she had not yet observed the Student in his classroom setting or consulted with the staff that teaches him. The Board Consultant testified she felt humiliated.
Testimony of Laura Mutrie, testimony of Ms. Heimann, testimony of Ms. Campanelli.
 18. Ms. Mutrie devised a new behavioral plan, part of which required the Board to fax her daily information and this was never done and the Board never told Ms. Mutrie why they did not fax the information. Testimony of Ms. Mutrie
 19. As part of her evaluation Ms. Mutrie observed a computer classroom where the teacher was giving multiple directions and the Student became predictably overwhelmed. The computer teacher was not properly trained or supervised in how to work with the Student. Testimony of Ms. Mutrie.
 20. Underlying and complicating this Student's situation is confusion and lack of understanding about the nature of his disability and degree of contentiousness between the parties. In her letter requesting due process the Parent claims that the Student is "intellectually disabled and has a diagnosis of PDD-NOS." The Board does not agree with the diagnosis of PDD-NOS, which is a diagnosis on the autism spectrum. The Parent relies on a diagnosis made by the Student's pediatrician, Dr. Neil Vitale, who concluded in a one page "To Whom It May Concern" letter dated May 4, 2004 that after a conference with the Parent and advocate and review of school reports and recent rating scales, the Student meets the DSM-IV criteria for Pervasive Developmental Disorder-not otherwise specified. Dr. Vitale did not testify. A Yale evaluation a year and a half earlier concluded the Student had a neurological impairment, but did not diagnose him as having PDD-NOS. P-2, B-2. The Parent had the Student evaluated by Dr. Robert E. Murphy, a psychologist, who was called by the Parent to testify on behalf of the Student. Dr. Murphy evaluated the Student in August 2004. He did not see the Student in the school setting and did not talk with the Board staff because the Parent did not allow him to. He concluded the Student was not autistic because the Student is reasonably well related and social relatedness is a core issue. Dr. Murphy found the Student to demonstrate joint intention (reinforced by someone else sharing his interests), to follow directions and to smile with eye contact. Dr. Murphy concluded that the Student does not fit the criteria for autism. Dr. Murphy concluded the student was functioning as a mildly retarded student. Further, Dr. Murphy concluded bipolar disorder is a good working hypothesis with an 80% probability of being the correct diagnosis. P-32, P-48, Testimony of Dr.

Murphy. Therefore the evidence presented by both parties supports the conclusion that this child does not fall on the autism spectrum and therefore is not disabled with PDD-NOS.

21. The Parent states that the Student “suffers from mental retardation with an IQ score of 63.” Parent’s Brief at page 3. The Board surprisingly takes issue with even this in their Reply Brief: “The Parent also claims, without support by either the evidence or the testimony of even her own witness, that the parties agree the Student is mentally retarded.” Board’s Reply Brief at page 1. The Student was evaluated by Yale Child Study Center under the supervision of Dr. Armin Thies from October 2002 to January 2003. Yale concluded using the WISC-III that the student’s intelligence is in the moderately to mildly deficient range with a full scale score of 58. The WISC-III was at that time the “gold standard for measuring intellectual functioning”. P-2 at 3. Yale concluded: “Based on [the Student’s] intellectual functioning and adaptive behavior, he should be considered as a student with an intellectual disability. [The Student’s] parents should apply for services from the Department of Mental Retardation to assist in his development.” P-2 at 6.
22. The Board itself conducted a psychoeducational evaluation of the Student in February 2004 and, in terms of intellectual functioning, arrived at much the same conclusion as Yale. The Board administered the WISC-IV and determined the Student’s “performance in general, was in the Extremely Low Range.” B-28 at 4 (Board School Psychologist Jennifer Rumbin). The Student’s Full Scale Score was a 63 “which falls in the range of a student with an Intellectual Disability.” *Id.* It is concluded that the Parent and Yale and Dr. Murphy and the Board’s psychologist are correct. The Student is mentally retarded and has an intellectual disability.
23. The Parent maintains that the Student has Attention Deficit Hyperactivity Disorder (ADHD). Dr. Murphy testified the Student had tremendous problems with impulsivity and attention which might be from ADHD or might be from rapidly cycling bipolar disorder. Ms. Mutrie also noted that the Student was impulsive and had a short attention span. Testimony of Dr. Murphy, testimony of Ms. Mutrie.
24. As part of her consultation the Consultant Mutrie visited the Student in his home setting and observed some similar but some strikingly different behaviors in the home setting. She observed behaviors in the home setting that made her question whether the Student also suffered from obsessive-compulsive disorder. For example, in the home setting the Student engaged in a forceful wringing of his hands and could not utilize a replacement behavior. Also, he engaged in a behavior of rapidly grabbing his chin for close to ten minutes that didn’t stop until he sat very close to the television in a small chair. Testimony of Consultant Mutrie. No one testified to such behaviors in the school setting and no clinician has diagnosed the Student with obsessive-compulsive disorder. Testimony of Ms. Mutrie, record as a whole.
25. The parties agree the student has a speech and language disorder. The parent presents a more disabled picture of the student than the Board does. Dr. Murphy (who met with the child twice in his office) described him as having

severe articulation difficulties. Testimony of Dr. Murphy. The Board finds that when the Student slows down he can be understood. Testimony of Dr. Gagliardi. The Student was making progress with his speech and language goals. The Student was transferring what he learned to the real world setting. He was observed by the Board's Speech and Language Pathologist in the classroom, recess, cafeteria and playground settings. An example of how he was transferring what he learned to the real world setting occurred when he was observed talking to the cafeteria lunch lady. Another example of the Student's progress is in his sentence structure: He progressed from saying things such as "He playing" to "He is playing." Testimony of Speech and Language Pathologist Rachel Baumgarten.

26. Behaviorally the Student made significant progress during the 2003-2004 first grade school year and is currently (2004-2005) no longer viewed as a behavior problem by the Board. During first grade he progressed to fewer blurting outs, increased raising of his hand and waiting to be called upon and inappropriate touching almost completely disappeared. Currently he participates in class in an appropriate manner and he interacts appropriately with other students who appear to like him. He is polite and friendly and well-liked. In short, he is moving in a positive direction. Testimony of Rebecca Campanelli, testimony of Ms. Mutrie, testimony of Mr. Gagliardi.
27. Socially the Student made a great deal of progress in that he made friends in school and not only the school staff but the consultant were able to name his friends. He had been invited to a birthday party from a school friend that he was not able to attend because the family had other plans. He was and is well liked by his peers and interacts appropriately with them. He is the leader in organizing dodge ball games on the playground at school. He is fitting in well in the regular education setting. Testimony of Ms. Mutrie, testimony of regular education teacher Rebecca Campanelli, testimony of Special Education teacher Katherine Heimann, testimony of Special Education teacher Jo-Ann DelPrete.
28. The Student's first grade special ed teacher, Katherine Heimann, is a very experienced special education teacher who testified in a credible and straightforward manner. She worked with the child a great deal: one hour a day in the morning on reading and one hour a day in the afternoon on math. This teacher liked the Student and looked out for his well-being. She notified Dr. Castellucci when she thought the regular education teacher needed more paraprofessional support to address the Student's needs. In June of 2003 the Student knew 20% of his dolch words and recognized 65% of his uppercase letters, 46% of his lowercase letters and none of his consonant sounds. In reading tests administered between March of 2004 and May 2004 the Student scored an accuracy rates ranging from 88% to 97% in reading without help. In June of 2004 the Student knew 100% of his uppercase letters, 100% of his lowercase letters and 35% of his consonants. Testimony of Ms. Heimann, B-43, B-49 Further, the IEPs demonstrate that the Student's objectives changed appropriately as he progressed from identifying letters to identifying consonants. P-5 at 4 (9/3/03), P-31 at 4 (4/5/04). The Parent argues that the

Board presented conflicting evidence of the Student's progress and concludes that the Student has made none. In January of 2004 the Student is reported by the Board to have reached a DRA level of '2' when the typically developing student would have reached a level '12'. By April of 2004 the Board reported that he has reached a DRA reading level of '3' when the typically developing student would remain at a level '12'. By the end of first grade the Student had achieved a level of 4, according to the testimony of Dr. Castellucci, when a typically developing student would have achieved a DRA reading level of '18.' The report card provided to the parents in June 2004 indicated the Student had achieved a level of 4 but the Parent claims to have never received it. The Parent presented into evidence a report card with the June blocks for grades, end of year performance, absences, etc. left blank; the Board presented the same report card with the June blocks filled in (see P-29, B-51). It is hard to understand how the parent could not have received the June report card given it is a standard report card given out at a standard time of year. Either the failure to receive it or receiving it blank would alert a parent to inquire about it. In any case, when the Student's second grade teacher testified on October 28, two months into the Student's second grade year, she reported that the Student was back at a DRA reading level of '3.' To the Parent this demonstrates that the Student has made no progress. P-29, testimony of Mother, testimony of Dr. Castellucci, testimony of Ms. Del Prete.

29. The Parent requests relief for the failure of the Board to convene a PPT in a timely manner after she requested it. This is related to the Parent's request for relief for the failure of the Board to provide an Extended Year Program. The Board does not dispute that the Student is eligible for an Extended Year Program. Rather the Board maintains that it did offer an Extended Year Program and that the Parent chose to have the Student vacation out of state instead of attending the Extended Year Program during the summer of 2004. The Parent maintains that the program was offered late and in this the Parent is correct. The Parent requested a PPT by letter dated May 25, 2004. The Board received the letter on June 2, 2004 and responded by way of a letter dated June 9, 2004 which the Parent did not receive until it was sent a second time after the Parent sent a second request on June 17, 2004. This was responded to by a phone call and a PPT was set for July 8, 2004. The Parent had requested the PPT to 1. Change the Student's identification to autistic; 2. Arrange for bus service for the Student so that he would not have to walk; 3. Devise a behavior plan; 4. Arrange for summer programming 5. Discuss an out of district placement. By the time the PPT was convened the Parent had requested due process (by letter dated June 23, 2004 but not faxed until June 28, 2004). At the PPT the Board agreed to provide the requested transportation and to expand Ms. Mutrie's consultation to include a functional behavioral analysis even though the Board and Ms. Mutrie felt the Student had shown improvement. The Board did not agree to change his identification or to provide for an out of district placement. They did offer a summer program but by this time the Parents had decided to have the Student vacation out of state. July 8th is too late for a Board to be offering a summer program.

The Student did not attend the summer program and regression was noted by the Board's Speech and Language Pathologist. B-35, B-36, B-38, B-39, B-40, B-41, B-46 Testimony of Mother, testimony of Dr. Castellucci, testimony of Rachel Baumgarten, testimony of Katherine Heinemann, testimony of Ms. Mutrie.

30. In her request for due process the Parent makes a claim for relief for procedural violations based on the manner in which she was treated during PPTs. The Parent believes she is not listened to at the PPTs and is not being respected by the Board in the PPT process and otherwise, and that she is being "picked on" by the Board staff, in part because she has a large family of five children. Testimony of Grandfather, testimony of Mother. The Mother offered the example that Principal Gagliardi does not make eye contact or say hello to her when she sees him at school but he is friendly with other mothers. Testimony of Mother. The Parent was particularly upset by two comments made by the then Director of Special Education, Renee Castellucci. Testimony of Mother. Dr. Castellucci died during the course of this hearing (in October 2004) so her full testimony was never given. However, she did testify early in the hearing to address in part these two comments. One comment was a reference to the Parent having five children in what the Parent interpreted as a derogatory manner. Testimony of Mother. Dr. Castellucci herself has a special needs child, now an adult, and had made the comment about the size of the Parent's family in an attempt to be sensitive to the greater needs of caring for a special needs child in a large family. Testimony of Dr. Castellucci. The other comment was a reference to an intellectually disabled child 'not going past third grade'. Testimony of Grandfather, testimony of Mother. Although Dr. Castellucci did not specifically remember that comment, she did not deny making it and offered that children who are intellectually disabled do typically plateau out. Testimony of Dr. Castellucci. The family feels no one looked at or talked to the Mother at the April 5, 2004 PPT. Testimony of Grandmother. The Mother feels attacked by Board staff. Testimony of Mother. However, on cross examination the Mother and other witnesses on the student's behalf testified that they were not prevented in any affirmative manner from fully participating in the PPT process. They were not told they couldn't speak and they were not told they could not ask questions. Testimony of Mother, Grandmother. Further, the Mother attended each of the PPTs with the assistance of a representative or an advocate and/or with family members supporting her. There were eight PPTs at issue in this manner as follows: June 19, 2003 and September 3, 2003 the Parent attended with assistance of Lisa Iwanowski of St. Vincent Special Needs Service. P-3 and P-5; November 10, 2003 the Parent attended with the assistance of Lori Chiappiniello of St. Vincent Special Needs Service. B-7; December 17, 2003 the Parent attended with the assistance of Michelle White, Family Coordinator of the Yale School of Medicine. B-11; January 9, 2004 the Parent attended with her father and with the assistance of Lisa Iwanowski of St. Vincent Special Needs Service. P-14; February 26, 2004 the Parent attended with the assistance of Lisa Iwanowski of St. Vincent Special Needs Service. P-20;

April 5, 2004 the Parent attended with her mother and father. P-31; July 8, 2004 the Parent attended with Richard Freeman, Advocate. B-46. The submitted tape recordings of the PPTs were poor in auditory quality and had apparent gaps in the recordings with some conversation being cut off in mid-sentence but enough was audible to document some level of participation by the parent or her advocates. P-45, P-46, P-47.

31. The Parent presented no evidence regarding her request for an extended school day.
32. The Parent presented no evidence regarding the appropriateness of the Foundation School as a placement for the Student.

DISCUSSION AND CONCLUSIONS OF LAW:

1. There is no dispute that the student is entitled to special education and related services as a student identified with a disability and thereby entitled to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. The Act defines FAPE as special education and related services which:
“(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
(D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. Section 1401(8).
3. The Burden of Proof rests with the Board to demonstrate the appropriateness of its proposed IEP and placement as well as compliance with the procedural requirements of the IDEA. *Walczak v. Florida Union Free School Dist.*, 142 F.3d 119, 122 (2d Cir. 1998); Conn. Reg. § 10-76h-14(a).
4. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley*, 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
5. As to the first prong of the Rowley two-part test, the Parent claims several procedural errors and she prevails in one. The Parent did not establish that the Board failed to allow the Parents to be reasonably full participants in the PPT process. The Parents were given notice and attended each PPT with a representative assisting them. No one for the Parent testified that they were prohibited from asking questions or participating. The evidence about the tone of the PPTs, at least as presented by the Parent and her advocate, was very subjective in nature and at most went to whether

the Parent was liked by particular Board members, and there is the likelihood that some comments were misinterpreted by the Parent. This is an issue that even if proven does not, by itself, amount to a procedural violation.

6. In regard to the claim that the Board did not convene a PPT in a timely manner, the evidence is that the Parent requested a PPT by letter dated May 25, 2004 but not received by the Board until June 2, 2004. The Board responded by way of a letter dated June 9, 2004 which the Parent did not receive. The Parent sent a second request on June 17, 2004. This was responded to by a phone call from the Board and a certified letter from the Board and a PPT was set for July 8, 2004. So the PPT was set approximately five weeks after the request was originally received but there had been attempts to schedule it prior to that and it was the lack of response from the Parent that delayed the scheduling. The clear procedural violation is not that the Board delayed acting upon the Parent's request for a PPT but rather that the Board did not discharge its duty to provide extended year programming in a timely manner regardless of whether or not the Parent had requested a PPT. The Federal Regulations provide "(1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section." 34 C.F.R. Section 300.309 Paragraph (a)(2) provides that "Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sections 300.340-300/350 that the services are necessary for the provision of FAPE to the child." *Id.* The Board does not dispute that the Student was eligible for extended year services. Given that he was eligible, it was incumbent upon the Board to schedule a PPT to plan for this programming, whether or not the Parent ever requested a PPT. By the time the Board offered the ESY the Parents had made plans for the Student to vacation in Florida. Given the Board did not schedule the PPT until July 8, 2004, the Parents were reasonable in this regard. If they had not planned for their son he may have lost out on all opportunities, leisure and academic alike. When the Board did not initiate scheduling a PPT prior to the summer to plan for the extended year programming, the Parents had no way of knowing what the Board would offer, when they would offer it or if they would offer it. The Board's attempt to shift blame to the Parent for the lack of summer programming is without merit.
7. As to the second prong of the *Rowley* two-part test, it must be determined whether the IEPs for the 03-04 and 04-05 school years were reasonably calculated to confer meaningful education benefit upon the student. *Rowley* 458 U.S. at 192, 102 S.Ct. at 3043-44. While the law does *not* require that a school district provide an educational program to *maximize* a student's educational potential (*Rowley* at 3046), the school district must provide more than "mere trivial advancement." *Mrs. B. v. Milford Board of Education*, 103 F.2d1114 (2d Cir. 1997).
8. IDEA requires the relevant public education authority to prepare and review at least annually an "individualized education program" (IEP) for each child with a disability. 20 U.S. 1414 (d)(4); 34 C.F.R. 300.343. The IEP is the primary vehicle for ensuring that a disabled child's educational program is individually tailored based on the child's unique abilities and needs. See U.S.C. 1414(d); 34 C.F.R. 300.345-300.350. A child's IEP describes, among other elements, the child's present levels of educational performance, measurable annual goals for addressing the child's educational needs

- that result from the child's disability and the individualized instruction and services that will be provided to help the child. 20 U.S.C. 1414(d)(1)(A); 34 C.F.R. 300.347.
9. Additionally, the IEP must include a statement of the individualized instruction and services (including supplementary aids and services and program supports and modifications for school personnel) that will allow the child to make appropriate progress toward attaining the annual goals of the IEP, "to be involved and progress in the general curriculum" and "to participate in extracurricular and other nonacademic activities", and "to be educated and participate with other children with disabilities and nondisabled children" in those extracurricular and other nonacademic activities. 20 U.S.C. 1414(d)(1)(A)(iii); 34 C.F.R. 300.347(a)(3)
 10. "If personalized instruction is being provided with sufficient support services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free, appropriate public education' as defined by the Act." *Rowley* at 3041. The individualized education program should be "reasonably calculated to enable the child to receive educational benefits [.]" *Rowley* at 3051. The *Rowley* court interpreted IDEA as requiring no more than a basic floor of opportunity. The goal of IDEA then is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F.Supp. 703, 718 (D.Conn. 1995), *citing, Rowley, supra*, at 200-01.
 11. In this case, the issue is whether the IEPs for the 2003-2004 and 2004-2005 school years provided FAPE to this student. To the Parent, the Student's low and declining DRA score between the first and second grade years demonstrates that he was not making progress in reading. It is more probable that this decline in DRA score demonstrates that the Student, without summer programming, regressed rather than that he had not learned. The Parent's interpretation of the decline in scores ignores the solid progress the Student made on learning his letters and consonants, which are the necessary building blocks to reading. The Student's DRA score is low compared to typically developing students but the Student is not typically developing in that he is intellectually disabled to a significant degree. This does not mean he will not learn to read, but rather that his progress will be slower. With the exception of the summer programming the Board provided FAPE for the student.
 12. It is clear that this child improved on his behavioral objectives. He was observed by more than one witness participating appropriately in his class and accessing his educational opportunities. The testimony was particularly convincing that he has friends and is well liked at school. If the Parents believe that friendships are lacking in the home setting they can build on what has begun at school, by initiating play dates and making it a priority to let the Student take advantage of invitations that classmates extend to him. It is understandable that the family is not trusting of the school staff in this and other regards. This is a family that the month after moving to a new school in a new town were told that their first grader was behaving and performing so well that he could be moved out of a self contained classroom and into a regular education setting (September 2003). A month and one half after that they were told their first grade child had behaved so badly that he had to be suspended for two days (November 2003). Two months after that, on January 9, 2004 they were presented with a list of inappropriate behaviors that would scare any parent: Their

first grade son was described as exhibiting inappropriate touching of female peers, impulsive blurting out, inappropriate racial and sexual slurs, disobeying school rules and being disrespectful of adults. Six months later, after filing for due process, the Parents are told there has been tremendous improvement. So while the Board staff impressed the hearing officer as being by and large competent and well-intentioned, the Parents' distrust of the Board staff is understandable. The breakdown in trust is so severe that it is unlikely the team can function to meet this Student's needs without a neutral party to assist in the process. Ms. Mutrie is appropriate for this role as she was selected by the Board but has earned the trust of the Parent. Further, although the Board staff reports a significant improvement in the Student's behavior, no one is suggesting that he does not continue to need behavioral objectives in his IEP, and Ms. Mutrie has been very helpful with behavioral strategies.

13. It must be noted that the Parents' case, while no doubt brought with sincerity and in good faith, was presented in such a disorganized fashion that the proceedings were unnecessarily prolonged. In addition, in regard to the Parents' claims that are not supported by this decision, at times comments would be blurting out by the Parent (often during the questioning by the Parent in response to answers witnesses were giving), which, had evidence been presented to support the blurting comments, might have resulted in different findings. Wide latitude was given to this pro se parent, and twice the hearing officer offered to let the Parents' advocate take a more direct and active role in the proceedings and this offer was twice declined. In other words, perhaps the Student had a better case than was presented, but the hearing officer must decide based on the evidence that the parties actually end up presenting, not the statements, opening, closing or intermittent (all of which are not under oath), that are presented in the course of a hearing.
14. The Parent presented no evidence on her claim for extended day programming which she seems to confuse with extended year programming and the record does not support the need for extended day programming.
15. The Parent presented almost no evidence on her preferred placement, the Foundation School. Evidence was not presented on the nature of their student population, what the staff/student ratio is, training and experience of the staff, familiarity of the staff with this Student, why the Parent thinks it would be an appropriate placement for the Student, and even the most basic of information such as whether they have an opening for this Student.

FINAL DECISION AND ORDER:

1. The Board has provided an appropriate program for the 2003-2004 and 2004-2005 school years.
2. The Board has provided appropriate support services for the Student in that the issue of transportation was resolved prior to the first day of hearing.
3. Based on the evidence presented the Board is not required to provide an extended day program.
4. The Board did fail to provide an appropriate extended year program for the Summer of 2004 and will convene a PPT immediately to begin to plan for the

Summer of 2005 so that the Parent will have as good an idea as is possible of the dates and extent of the programming, even if the exact nature of the programming must be determined closer to the end of the current school year. In no case will the PPT in which the extended year program is finalized be conducted later than the last day of this school year. The Board will continue to pay for the services of Ms. Mutrie as needed. What is needed will be decided by the team of which the Parents and Ms. Mutrie are members, but will at least include having Ms. Mutrie attend the PPTs throughout the 2005-2006 school year and take an active role in the extended year planning, behavioral planning and home-school communication with a goal of rebuilding trust between the Parent and the Board.

5. The Board developed an appropriate behavior plan.
6. The Board did not fail to convene a PPT in a timely manner after the parent requested it.
7. The Board did not fail to allow the parents to be full participants in PPT.